IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10474 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANUBHAI S PAREKH & 39 - Petitioner(s)
Versus
AMC & 3 - Respondent(s)

==========

Appearance :
MR AM RAVAL for Petitioner(s) : 1 - 40.
MR HS MUNSHAW for Respondent(s) : 1, 4,
MS M L SHAH, AGP for Respondent(s) : 2 - 3.
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have prayed for direction to the respondents to fill up the post of Surveillance Investigator as per the Circular of the

Corporation dated 28-04-1997. The petitioners claim vested right to be appointed to the said posts. They have therefore made the above prayers and certain other prayers incidental thereto.

2. Short facts leading to the present petition are that the petitioners who are working as Malaria Majoors with the respondent no.1 Ahmedabad Municipal Corporation were placed in the waiting list for appointment to the post of Surveillance Investigator. It is the case of the petitioners that the Corporation vide circular dated 28-04-1997 invited applications from the employees working in Malaria Division as Malaria Majoor and Malaria Havaldars for preparation of list for appointment to the post of Surveillance Investigator. The petitioners and other similarly situated persons applied. Consequently, a list of 43 persons from amongst the Malaria Majoors with minimum qualification of S.S.C. was prepared. It is the case of the petitioners that they are working since number of years in the cadre of Malaria Majoors and as per the waiting list prepared by the respondents, they should have been appointed to the post of Malaria Surveillance Investigator in their turn. Instead the respondents

decided to merge different cadres and a new post called Multipurpose Health Worker was created. The petitioners therefore, lost the chance of getting promotion though they were qualified and were placed in the waiting list for being appointed to the post of Surveillance Investigator.

2.1 It is further the case of the petitioners that there are no promotional avenues for Malaria Majoors and for want of promotional avenues, the petitioners are stagnating in the same cadre since their engagement in service. It is therefore urged that even the lone promotion which the petitioners were likely to receive is taken away by the respondents. In short, it is the case of the petitioners that action of the respondent is illegal and unlawful.

3. The respondents have appeared and filed affidavit in reply. In the affidavit in reply dated 05-02-1999, it is stated inter-alia that in the past recruitment was made for the post of Malaria Surveillance Investigator by selection from Malaria Majoors. However, subsequently, it was found that new cadre of Multipurpose Health Worker has to be brought in to

existence and with that, it was not necessary to fill up the posts of Malaria Surveillance Investigators and other similar cadres. It is further stated that in the cadre of Malaria Surveillance Investigator there were 122 vacancies. 61 posts were already filled up. It was decided not to fill up the remaining vacancies since new post of Multipurpose Health Worker is brought into existence and necessary rules and regulations for the said post were being framed.

4. Thereafter in an additional affidavit dated 14-03-2006, it is further stated that post of Malaria Surveillance Investigator is that of Class-III post. The post of Malaria Surveillance Investigator is not to be filled by promotion. Subsequently, the Standing Committee of Ahmedabad Municipal Corporation resolved to create a new cadre of Multipurpose Health Worker through a resolution dated 16-01-1999 and recruitment rules have also been framed under the provisions of section 465(1) of Bombay Provincial Municipal Corporation Act. Subsequently, General Body of the Corporation also approved resolution dated 16-01-1999. Thus with the creation of new cadres of Malaria Surveillance Investigator, various cadres like Malaria Surveillance

Investigator, Field Workers as well as Auxiliary Nurse, Mid-wife have been merged. It is therefore, suggested that there is no existence of separate cadre of Malaria Surveillance Investigator. It is therefore, contended that the petitioner cannot seek appointment on the said post.

5. Appearing for the petitioners learned advocate Shri Raval strongly urged that the respondents erred in not making the appointment of the petitioners to the post of Malaria Surveillance Investigator. He submitted that names of the petitioners were kept in Waiting List. The cadre therefore, could not have been abolished detrimental to the rights of the petitioner. It was also contended that in absence of their appointment to the post of Malaria Surveillance Investigator, the petitioners would be deprived of any chance of or avenue of promotion all together in their service cadre. It was contended that it is held by the Hon'ble Supreme Court that every employee should have at-least two chances of promotion during his service carrier. The petitioners were denied of even one chance to discharge their duties on higher posts.

5.1 The learned advocate placed reliance on the decision of the Hon'ble Supreme Court in the case of R.S. Mittal v. Union of India reported in 1995(2)SLR 437 in support of his contentions .

5.2 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of P. Mahendran and others v. State of Karnataka and others reported in AIR 1990 Supreme Court 405 to urge that any amendment in the recruitment rules cannot have effect on the selection already made.

6. On the other hand, learned advocate Shri Munshaw appearing for the respondents opposed the petition. He submitted that the petitioners have no vested right to be appointed on the post in question. He further submitted that the respondents had validly merged different cadres in the interest of administration. When post of Malaria Surveillance Investigator no longer exists, the petitioners have no right to insist that they must be appointed simply on the strength of they being placed in the Waiting List.

6.1 It was contended that the petitioners have been

granted the benefits of two higher pay scales as per the policy of the Corporation upon their stagnation in the same cadre for a certain number of years of service.

7. Having heard the learned advocates appearing for the parties, it would appear that the petitioners who are working as Malaria Surveillance Majoors were placed in the Waiting List to be operated for the purpose of filling up of vacant posts of Malaria Surveillance Investigator. By their own account the petitioners were placed in the Waiting List. Before the petitioners could be actually absorbed, the Corporation decided to merge different cadres and create a new cadre of Multipurpose Health Worker. The new cadre comprises of different existing cadres including that of Malaria Surveillance Investigator. By the well settled principles of law, a person in the Waiting List does not have the vested right to seek appointment that too when the post is no longer in existence. The respondents had sufficient power to merge different cadres and to create new cadre if found necessary and in the interest of administration. The petitioners cannot insist that they be posted on a cadre which no

longer exists simply because before the decision to merge the cadre was taken, they were placed in the Waiting List.

8. In the case of R.S. Mittal v. Union of India (Supra), the Hon'ble Supreme Court was concerned with the situation whereby a person placed in the select panel was not appointed to the post in question. The administration did not grant him appointment. It was in that background that the Hon'ble Supreme Court observed that there has to be a justifiable reason to decline to appoint a person who is in the select panel. It was found that in the said case there was a mere inaction on the part of the Government and no reason was given as to why the appointments were not offered to the candidates in accordance with law. It was therefore, found that the approach of the Government was unjustified. In the present case however, the respondents could not operate the Waiting List simply because the cadre for which the same was prepared no longer existed thereafter.

9. In the decision of P. Mahendran and others v. State of Karnataka and others(Supra), when the Hon'ble Supreme

Court was considering the fact of amendment in the recruitment rules, once the selection process had begun. Advertisement was issued for selection on the basis of unamended rules after which by amendment in the rules, eligible criteria for the post in question was changed. In that background the Hon'ble Supreme Court found that amendment cannot have retrospective effect so as to apply to the selection of candidates already made. The ratio laid down therein therefore, would not apply to the facts of the present case.

10. I find that the petitioners have not made out any case for opposing the action of the respondents in merging different cadres and bringing in existence a new cadre of Multipurpose Health Worker. I find that the petitioners who were placed in the Waiting List awaiting their turn for appointment to the post of Malaria Surveillance Investigator cannot make any legal grievance for not being appointed to the said post when for valid reasons the administration merged the cadres and brought into existence a new post.

11. The grievance of the petitioners with respect to the non-availability of promotional avenues needs to be

examined in the factual background arising in the present petition. As stated by the respondents in there affidavit in reply in any case post of Malaria Surveillance Investigator was not a promotional post and was meant only for direct recruitment. By way of administrative instruction, case of Malaria Majoors was being considered for the appointment to the said post from amongst those Majoors who possessed minimum education qualification of S.S.C. Pass. Thus, it is not a chance of promotion which is being taken away from the petitioners. In any case, this petition has not been filed seeking direction against respondents to create promotional avenues. Even other-wise the respondents have pointed out that the petitioners have received benefits of higher pay scales twice in their service carrier upon stagnation in the same scale for a certain number of years of service. In the decision of State of Tripura and others v. K.K. Roy, reported in 2004 AIR SCW 1, the Hon'ble Supreme Court finding that the employees did not have two promotional avenues, directed that such employees should be granted two higher grades one upon expiry of a period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof. In that view

also the grievance of the petitioners regarding non-availability of promotional avenues gets mitigated since the respondents themselves have granted the benefits of two higher pay scales on account of stagnation of the petitioners.

12.In the result, I do not find any merit in the petition. If in any individual case, any of the petitioners have not received benefits of higher pay scale, it will be open for such employees to bring this aspect to the notice of the administration and I am sure the same will be examined in accordance with law.

13.Subject to the above observations, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)